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OFFICE OF PETITIONS

In re :
Brady, et al. : DECISION REGARDING
Application No. 10/001,237 : PATENT TERM ADJUSTMENT
Filed: October 30, 2001 :
Patent No. 6,979,556 :
:

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(b)", filed April 6, 2007. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seven hundred twenty-nine (729) days to nine hundred one (901) days.

The application for patent term adjustment is DISMISSED.

On April 5, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is seven hundred twenty-nine (729) days. On April 6, 2007, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is nine hundred one (901) days.

Patentees state that the patent issuing is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of seven hundred twenty-nine (729) days based on an adjustment for PTO delay of six hundred twenty-seven (627) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), two hundred sixteen (216) and one hundred thirteen (113) days

¹ Applicants filed the application for patent term adjustment together with the filing of the issue fee.

pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delays of fifty-five (55) and one hundred seventy-two (172) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of one hundred seventy-two (172) days is at issue.

A review of the application file reveals that applicants filed a Supplemental Information Disclosure Statement (IDS) on January 8, 2007, after they had previously filed a response on July 20, 2006. The IDS did not contain a proper 37 C.F.R. § 1.704(d) statement. The IDS contained a statement that "each item of information contained in this Statement was first cited in a communication from a foreign patent office in a counterpart application, and that this communication was not received by any individual designated in 37 C.F.R. § 1.56(c) more than thirty days prior to the filing of this Statement." § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "each item of information contained in the information disclosure statement was first cited in **any** communication from a foreign patent office in a counterpart application and that this communication was not received" more than thirty days prior to the filing of the IDS.

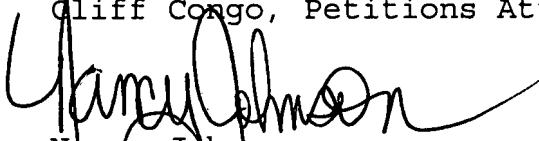
Applicants should have mirrored the language as required by § 1.704(d). Accordingly, applicant delay of one hundred seventy-two (172) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(8).

In view thereof, the correct determination of patent term adjustment is **seven hundred twenty-nine (729) days**.

If applicants want to make the proper assertion, then applicants may file a Request for Reconsideration of this patent term adjustment decision, with a statement mirroring the language of § 1.704(d). Patentees are given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

Receipt of the fee under 37 C.F.R. § 1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.


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Office of Petitions